

Senate Study Bill 1195

SENATE/HOUSE FILE _____
BY (PROPOSED IOWA FINANCE
AUTHORITY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the regulation of abstractors, establishing
2 fees, penalties, and judicial remedies, and providing an
3 effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1233DP 81
6 jr/cf/24

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1 1 Section 1. NEW SECTION. 16.94 BOARD OF EXAMINERS.
1 2 1. An abstractor board of examiners is created within the
1 3 division. The board shall consist of seven members appointed
1 4 by the governor, subject to confirmation by the senate. Three
1 5 of the members appointed shall be actively engaged in the
1 6 business of preparing abstracts of title to real property or
1 7 executing real property title searches, one shall be an
1 8 attorney, one shall be a real estate broker, and two shall be
1 9 from the general public. Members of the board shall serve
1 10 three-year, staggered terms as designated by the governor and
1 11 appointments to the board are subject to the requirements of
1 12 section 69.16, 69.16A, and 69.19. Vacancies shall be filled
1 13 by the governor for the duration of the unexpired term.
1 14 Members of the board are entitled to receive a per diem as
1 15 specified in section 7E.6 for each day spent in performance of
1 16 duties as members and shall be reimbursed for all actual and
1 17 necessary expenses incurred in the performance of duties as
1 18 members. Per diem and expenses shall be paid from the title
1 19 guaranty fund.

1 20 2. The abstractor board of examiners shall administer the
1 21 provisions of this subchapter in accordance with rules adopted
1 22 by the division pursuant to chapter 17A.

1 23 Sec. 2. NEW SECTION. 16.95 LICENSURE, EXAMINATION, AND
1 24 FEES == SEAL == NAME == MAINTENANCE OF ABSTRACT TITLE PLANT.

1 25 1. Every person, firm, partnership, association, or
1 26 corporation, which makes, compiles, or completes and sells
1 27 abstracts of title to real estate or executes real property
1 28 title searches in the state of Iowa shall first secure and
1 29 hold a valid abstractor license issued in accordance with the
1 30 provisions of this section. The annual fee for an abstractor
1 31 license shall be fixed by the abstractor board of examiners by
1 32 rule pursuant to chapter 17A. The board may prorate license
1 33 fees for licenses to be effective for a period of time less
1 34 than one year. An abstractor who, on the effective date of
1 35 this Act, is a participant in the title guaranty program under
2 1 section 16.91 shall be eligible to receive a license without
2 2 meeting the examination requirements set forth in subsection 5
2 3 of this section. A licensee who receives a license by virtue
2 4 of being a participant under section 16.91 is subject to
2 5 continuing education requirements set forth by the board.

2 6 2. The annual fee shall accompany the application for
2 7 license and shall be returned to the applicant if the license
2 8 is not issued, except as provided in subsection 5. A license
2 9 issued under this section expires on December 31 of the year
2 10 for which the license is issued. In the absence of any
2 11 condition or reason which might warrant the refusal of the
2 12 granting of a renewal license, the board shall issue a license
2 13 each year upon receipt of a written request of the applicant
2 14 together with the annual fee established by the board.

2 15 3. The board may issue an inactive license to a licensee
2 16 eligible for such inactive license as determined by the board.

2 17 The fee for an inactive license shall be the same as the
2 18 annual fee for an abstractor license established under this
2 19 section.

2 20 4. A license shall not be issued to an applicant until the
2 21 applicant files with the board a bond and a policy of
2 22 insurance as provided in this section. Such insurance shall
2 23 be a policy of errors and omissions in an amount as determined
2 24 by the board and shall be issued by a company authorized to
2 25 transact business in the state of Iowa.

2 26 5. a. Any person, firm, partnership, association, or
2 27 corporation applying for an initial license under this section
2 28 may obtain the license by complying with the provisions of
2 29 this section and by passing an examination conducted by the
2 30 board. The board shall hold at least two examinations each
2 31 year, to be held at times and places to be fixed by the board.
2 32 The board shall give notice of an examination at least thirty
2 33 days before the time fixed for the commencement of the
2 34 examination by publication in the Iowa administrative
2 35 bulletin. The fee for the examination shall be fixed by the
3 1 board by rule in an amount adequate to cover the cost of the
3 2 examination and shall be paid to the board at the time
3 3 application is made for such examination. In the case of a
3 4 firm, partnership, association, or corporation, the
3 5 examination need only be taken by those persons designated to
3 6 sign abstracts or real property searches on behalf of the
3 7 firm, partnership, association, or corporation. Each licensed
3 8 firm, partnership, association, or corporation shall submit in
3 9 writing to the board a list of such designated persons as a
3 10 condition for license renewal.

3 11 b. If the applicant does not pass the examination, the
3 12 board shall deny the application for a license and retain the
3 13 examination fee. An applicant who has failed to pass such
3 14 examination may apply for and take a second examination after
3 15 a period of six months has elapsed from the date of the
3 16 previous examination. Any subsequent examinations are
3 17 available only at the discretion of the board.

3 18 6. The board shall establish continuing education
3 19 requirements as a condition for renewal of the license, as
3 20 provided in section 272C.2.

3 21 7. A licensee shall provide a seal which shall have
3 22 stamped thereon the name of the licensee, and the licensee
3 23 shall deposit with the board an impression of the seal and the
3 24 signatures of all persons authorized to sign on behalf of the
3 25 licensee. The seal shall be impressed on the license and the
3 26 license shall be signed by one of the persons whose signatures
3 27 is on file with the board.

3 28 8. An abstractor license shall not be granted to any
3 29 corporation applying for a corporate license under this
3 30 section when it appears that the corporate name duplicates or
3 31 is quite similar to that of a duly qualified, active, and
3 32 existing corporation already licensed under this section and
3 33 located in the same geographic area where such corporate
3 34 applicant desires to transact its business. Neither shall a
3 35 license be granted to any person who chooses a business name
4 1 which duplicates or is similar to that of a presently licensed
4 2 individual, association, firm, person, or partnership actively
4 3 engaged in abstracting and located in the same geographic area
4 4 where such license applicant intends to do business, unless
4 5 such name consists of, or is directly derived from, the name
4 6 of an individual directly connected with the licensee.

4 7 9. A licensee shall own or lease, and maintain and use in
4 8 the preparation of abstracts of title or the execution of real
4 9 property searches, an up-to-date abstract title plant
4 10 including tract indexes for real estate for each county in
4 11 which abstracts are prepared or real property searches are
4 12 executed by the licensee. The tract indexes shall contain a
4 13 reference to all instruments affecting the real estate that
4 14 are recorded in the office of the county recorder, and shall
4 15 contain records for at least the last forty years.

4 16 Sec. 3. NEW SECTION. 16.96 UNLAWFUL FOR COUNTY OFFICERS
4 17 TO PREVENT USE OF RECORDS == CIVIL ENFORCEMENT.

4 18 A county officer shall not prevent or prohibit any person
4 19 who has complied with the provisions of this subchapter from a
4 20 proper use of the records of the office of the county officer.
4 21 A county officer who violates this section is guilty of a
4 22 simple misdemeanor. Judicial action to enforce the right of
4 23 access shall be taken pursuant to section 22.10.

4 24 Sec. 4. NEW SECTION. 16.97 SUSPENSION OR REVOCATION OF
4 25 LICENSE == CIVIL PENALTY == NOTICE AND HEARING.

4 26 The board, after notice and hearing conducted in accordance
4 27 with the Iowa administrative procedure Act, chapter 17A, may

4 28 suspend or revoke a license, or impose a civil penalty of up
4 29 to one thousand dollars, for a violation of any provision of
4 30 this subchapter or the rules adopted pursuant to this
4 31 subchapter, or upon the conviction of a licensee for malicious
4 32 destruction of public records, or for fraudulent practices.
4 33 Sec. 5. NEW SECTION. 16.98 PROHIBITED ACTIVITIES ==
4 34 CIVIL ENFORCEMENT.
4 35 1. A licensed abstractor shall not pay any portion of the
5 1 charge made for making, extending, or certifying an abstract
5 2 of title to real estate to any other person. Nothing in this
5 3 subsection prohibits the payment of a fee to a licensed
5 4 abstractor for any services performed.
5 5 2. On and after July 1, 2006, no person shall make,
5 6 compile, or complete and sell abstracts of title to real
5 7 estate or execute real property title searches in the state of
5 8 Iowa unless such person is operated or managed on a full-time
5 9 basis or employs on a full-time basis an individual licensed
5 10 under the provisions of this subchapter.
5 11 3. A private party may bring an action against a person
5 12 who violates a provision of this subchapter to recover, in
5 13 addition to actual damages, one hundred dollars in statutory
5 14 damages and reasonable attorney fees.
5 15 Sec. 6. Section 272C.1, subsection 6, Code 2005, is
5 16 amended by adding the following new paragraph:
5 17 NEW PARAGRAPH. ac. The abstractor board of examiners
5 18 pursuant to section 16.94.
5 19 Sec. 7. Section 272C.3, subsection 2, paragraph a, Code
5 20 2005, is amended to read as follows:
5 21 a. Revoke a license, or suspend a license either until
5 22 further order of the board or for a specified period, upon any
5 23 of the grounds specified in section 16.97, 147.55, 148.6,
5 24 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10,
5 25 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter
5 26 151, 155, 507B, or 522B, as applicable, or upon any other
5 27 grounds specifically provided for in this chapter for
5 28 revocation of the license of a licensee subject to the
5 29 jurisdiction of that board, or upon failure of the licensee to
5 30 comply with a decision of the board imposing licensee
5 31 discipline;
5 32 Sec. 8. Section 272C.4, subsection 6, Code 2005, is
5 33 amended to read as follows:
5 34 6. Define by rule acts or omissions which are grounds for
5 35 revocation or suspension of a license under section 16.97,
6 1 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13,
6 2 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or
6 3 602.3203 or chapter 151, 155, 507B or 522B, as applicable, and
6 4 to define by rule acts or omissions which constitute
6 5 negligence, careless acts or omissions within the meaning of
6 6 section 272C.3, subsection 2, paragraph "b", which licensees
6 7 are required to report to the board pursuant to section
6 8 272C.9, subsection 2;
6 9 Sec. 9. Section 272C.5, subsection 2, paragraph c, Code
6 10 2005, is amended to read as follows:
6 11 c. Shall state whether the procedures are an alternative
6 12 to or an addition to the procedures stated in sections 16.97,
6 13 147.58 through 147.71, 148.6 through 148.9, 152.10, 152.11,
6 14 153.33, 154A.23, 542.11, 542B.22, 543B.35, 543B.36, and
6 15 544B.16.
6 16 Sec. 10. INITIAL ABSTRACTOR BOARD OF EXAMINERS ==
6 17 APPOINTMENTS. The initial members of the abstractor board of
6 18 examiners shall be appointed to the following terms:
6 19 1. Three members shall be appointed for a term of three
6 20 years.
6 21 2. Two members shall be appointed for a term of two years.
6 22 3. Two members shall be appointed for a term of one year.
6 23 Sec. 11. EFFECTIVE DATE. This Act takes effect July 1,
6 24 2006.
6 25 EXPLANATION
6 26 This bill creates the abstractor board of examiners within
6 27 the title guaranty division of the Iowa finance authority.
6 28 The board is authorized to issue a license upon the
6 29 application of a person, firm, partnership, association, or
6 30 corporation who engages in the business of preparing abstracts
6 31 of title to real property or who conducts real property title
6 32 searches and payment of a license fee. A person who prepares
6 33 abstracts of title to real property or real property title
6 34 searches is required to pass an examination, and pay an
6 35 examination fee, to be conducted by the abstractor board of
7 1 examiners. The Iowa finance authority board of directors is
7 2 to adopt rules for the administration of the new provisions.
7 3 The abstractor board of examiners has authority to conduct

7 4 examinations of applicants, to establish bond and insurance
7 5 requirements, to establish continuing education requirements,
7 6 and to set fees for the examination and license. Any county
7 7 officer who prevents or prohibits proper access to records is
7 8 guilty of a simple misdemeanor. Access to the records may be
7 9 compelled by judicial action pursuant to Code section 22.10.
7 10 A private party may bring an action for damages for violations
7 11 of the new provisions.
7 12 The bill takes effect July 1, 2006, to allow time for the
7 13 authority to adopt implementing rules, appoint the first board
7 14 of examiners, and adopt appropriation examinations.
7 15 LSB 1233DP 81
7 16 jr:nh/cf/24.1